TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 25.

THE STEAMTUG "JOHN G. STEVENS," HER ENGINES, &c., EDWARD H. LOUD, ET AL., OWNERS, &c., APPELLANTS,

vs.

FREDERICK H. GLADWISH ET AL.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED SEPTEMBER 27, 1894.

(15,693.)

10/5

(15,693.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 175.

THE STEAMTUG "JOHN G. STEVENS," HER ENGINES, &c., EDWARD H. LOUD, ET AL., OWNERS, &c., APPELLANTS,

vs.

FREDERICK H. GLADWISH ET AL.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX.

	Original.	Print.
Certificate of the judges	1	1
Statement of facts	2	1
Question of law	3	2
Clerk's certificate	4	2

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 2, 1896.

1 United States Circuit Court of Appeals for the Second Circuit.

FREDERICK H. GLADWISH, WILLIAM C. MOQUIN, and CARSTEN OFFERMAN, Libellants and Appellees,
vs.
THE STEAMTUG "JOHN G. STEVENS," HER ENGINES, ETC.; EDWARD H. Loud, Oscar F. Chapman, Benjamin Flint, Robert S. Emery, H. L. Preble, John McDonald, William E. Douglass, Augustus M. Morse, Thomas Dunn, George Elliott, O. M. Vinal, Abijah Vinal, Frank H. Patrick, Charles R. Rogers, Owners of the Schooner "C. R. Flint," and as Carriers of the Cargo Laden on Board Thereof, and Andrew J. Brown, Master of said Schooner, Intervenors and Appellants.

A decree adjudging that the libellants and appellees, Gladwish *et al.*, recover against the said steamtug "John G. Stevens" the amount reported due to them by the commissioner, with interest and costs, amounting in all to two hundred and eighteen dollars and seven cents ($218.07), and further adjudging that the lien of the appellees is a superior lien and entitled to priority over the lien of the appellants, Edward H. Loud *et al.*, and that the balance of the proceeds of the sale of said steamtug be paid out of the registry to said appellees, having been made in the district court of the United States for the eastern district of New York, and an appeal having been taken therefrom to this court by the above-named Edward H. Loud *et al.*, and the cause having come on for final hearing, a

2 certain question of law arose, concerning which this court desires the instruction of the Supreme Court of the United States for its proper decision. The facts out of which the questions arose are as follows:

1. That the home port of the tug is New York.

2. That between December 7th, 1885, and March 9th, 1886, Gladwish, Moquin & Company furnished coal to the tug in her home port, and filed notices of liens therefor under the laws of the State of New York, chap. 482 of Laws of 1862, thereby creating statutory liens on her.

3. That on March 8th, 1886, the tug "J. G. Stevens" was employed in the port of New York to tow the schooner "C. R. Flint" through the waters of said port, and while towing negligently allowed the "Flint" to collide with the bark "Doris Eckhoff" in tow of the tug "R. S. Carter."

4. On March 16th, 1886, Loud *et al.*, owners of the "Flint," libelled the "Stevens" and the "Carter," in admiralty, in the district court of the United States for the eastern district of New York, for the collision damage.

5. On March 16th, 1886, Gladwish *et al.* libelled the "Stevens," in the same court, to enforce their supply lien under the State law.

6. The Loud libel resulted in a decree condemning both tugs for damages exceeding $15,000.

7. The Gladwish libel resulted in a decree condemning the "Stevens" for the coal supplied and costs, in all $218.07.

3 8. The district court awarded priority to the supply lien, which exhausts the fund resulting from the sale of the "Stevens," leaving the Loud decree unsatisfied.

Upon these facts this court desires instruction upon the question of law for the proper decision of said cause, namely:

Is the lien for the damages occasioned by negligent towage, which arose on March 8th, 1886, to be preferred to the previous State lien for supplies, the libel for supplies being filed last?

And to that end this court hereby certifies such question to the Supreme Court.

WM. J. WALLACE,
E. HENRY LACOMBE,
N. SHIPMAN,
Judges of the U. S. Circuit Court of Appeals for the Second Circuit.

4 UNITED STATES OF AMERICA, *Second Circuit,* } ss:

I, John A. Shields, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing certificate in the cause entitled Frederick H. Gladwish, William C. Moquin, and Carsten Offerman, libellants and appellees, *vs.* The Steamtug "John G. Stevens," her engines, etc.; Edward H. Loud, Oscar F. Chapman, Benjamin Flint, Robert S. Emery, H. L. Preble, John McDonald, William E. Douglass, Augustus M. Morse, Thomas Dunn, George Elliott, O. M. Vinal, Abijah Vinal, Frank H. Patrick, Charles R. Rogers, owners of the schooner "C. R. Flint," and as carriers of the cargo laden on board thereof, and Andrew J. Brown, master of said schooner, intervenors and appellants, was duly filed and entered of record in my office by order of said court on the fourth day of June, 1894, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said United States circuit court of appeals for the second circuit, at the city of New York, in the southern district of the State of New York, this 20th day of June, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States the one hundred and eighteenth.

Seal United States Circuit Court of Appeals, Second Circuit.

JOHN A. SHIELDS,
Clerk United States Circuit Court of Appeals for the Second Circuit.

5 [Endorsed:] U. S. circuit court of appeals, second circuit. Frederick H. Gladwish *et al.*, lib'l'ts & appellees, *vs.* The Steamtug "John G. Stevens," her engines, etc.; Edward H. Loud *et al.*, intervenors & appellants. Certificate for instructions. United States circuit court of appeals, second circuit. Filed Jun- 4, 1894. John A. Shields, clerk.

Endorsed on cover: Case No. 15,693. U. S. circuit court of appeals, second circuit. Term No., 175. The Steamtug "John G. Stevens," her engines, &c.; Edward H. Loud *et al.*, owners, &c., appellants, *vs.* Frederick H. Gladwish *et al.* Filed September 27, 1894. (Certificate.)